SUPREME COURT OF THE UNITED STATES.

No. ~~39~~ 30.

GEORGE W. WARD AND RICHARD K. CALL, REGISTER AND RECEIVER, &c., (U. S.) APPELLANTS,

VERSUS

JACOB ROBINSON AND F. SWEARINGEN.

APPEAL FROM THE COURT OF APPEALS FOR THE TERRITORY OF FLORIDA.

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Pleas at the city of Tallahassee, before the court of appeals of the Territory of Florida, on Thursday, the twentieth day of January, in the year of our Lord one thousand eight hundred and thirty-one.

Be it remembered, that heretofore, to wit, on the day of A. D. 1827, was sued out of the said court of appeals a writ of error, directed to the superior court for the middle district of Florida; (the above writ of error has been lost or mislaid;) agreeable to which writ the following record and proceedings were brought and filed in the said court of appeals on the 1st day of January, A. D. 1828.

RECORD.

TERRITORY OF FLORIDA, sc.

Be it remembered, that heretofore, to wit, on the thirteenth day of December, in the year one thousand eight hundred and twenty six, was issued from the clerk's office of the superior court for the middle district of Florida, a writ of mandamus directed to George W. Ward, register of the western land district of Florida, and Richard K. Call, receiver of public moneys in said district, in the words following:

"CLERK'S OFFICE, *superior court, middle district of Florida, Leon, &c.* In the name and by the authority of the United States, to George W. Ward, register of the western land district of Florida, and Richard K. Call, receiver of public moneys for lands in the district aforesaid, greeting:

Whereas Jacob Robinson and Frederick Swearengen, previous to the first day of January, in the year of our Lord one thousand eight hundred and twenty-five, did cultivate and inhabit, each in his own right, the southeast quarter of section twenty, in township five, range ten north and west, in the western land district of Florida, and applied for permission to enter and purchase three quarter sections of land under the act of Congress entitled "An act giving the right of pre-emption in the purchase of lands to certain settlers in the States of Alabama, Mississippi, and the Territory of Florida," approved the 22d day of April, A. D. 1826, producing the affidavits of John Hobson and William S. Kildee in support of their claim, and the register and receiver of the land office aforesaid objected to the entry, and refused to admit the application, on the ground alone that the petitioners were only entitled to two quarter sections, one to each, under the act referred to: and whereas by the complaint of the said petitioners we are informed that you, the said George W. Ward and R. K. Call, as aforesaid, will not permit them, the said Jacob Robinson and Frederick Swearengen, to enter and purchase, by virtue of their right aforesaid, three quarter sections of land, not regarding their claim and application, notwithstanding their compliance with the requisitions of the law, and that consulting and advising together, you do still refuse pre-emption to the said Robinson and Swearengen to enter and purchase said three quarter sections in your several offices: by reason of the said acts and doings they are much aggrieved, and are in danger of sustaining much injury, and have prayed a remedy in this behalf: We, therefore, being willing to maintain the statute aforesaid, and that speedy justice may be done in this behalf, do command you, the said George W. Ward and Richard K. Call, register and receiver as aforesaid, and each of you, that immediately after the receipt of this writ you do permit the said Jacob Robinson and Frederick Swearengen to enter and purchase the said three quarter sections of land, to wit, the southeast quarter of section twenty, township five, range ten, north and west, in the western land district of Florida, and the two other quarter sections to which they are entitled under the provisions of the act above referred to in your several offices, receive payment and give certificates for the same; and that you do and execute all the other matters necessary for the obtaining patents for the same, and when you shall have executed this command, you shall make the same known unto our Judge of the superior court for the middle district of Florida, Leon, instanter, together with this writ. Witness Augustus B. Woodward, Judge of the middle district of Florida, this thirteenth day of December, in the year of our Lord one thousand eight hundred and twenty-six, and of the independence of the United States the fifty-first.

"C. NICHOLAS, *Clerk.*"

Upon which said writ the following return is made: "We have done as within commanded.

"G. W. WARD, *Register.*
"R. K. CALL, *Receiver.*"

The following is the petition on which the above writ of mandamus was founded:

"To the honorable A. B. Woodward, Judge of the superior court for the district of middle Florida:

"Your petitioners, Jacob Robinson and Frederick Swearengen, would respectfully state to your honor, that they cultivated and inhabited, each in his own right, the southeast quarter of section twenty, in township five, range ten, north and west, in the western land district of Florida, previous to the 1st day of January, 1825, as is fully proved by the affidavits of John Hobson and William S. Kildee, by reason of which cultivation and habitation, and the conflict produced by your petitioners settling on the same quarter, they became entitled to enter and purchase three quarter sections, to be equally divided between them, agreeable to the provisions of the act of Congress giving the right of pre-emption to settlers in Florida, &c. Your petitioners would state, that they applied to the register and receiver for permission to enter the said three quarter sections, who refused, on the grounds alone that your petitioners were only entitled to two quarter sections. Your petitioners would therefore respectfully request your honor to award them a mandamus, commanding R. K. Call, Esq., receiver, and G. W. Ward, register of the land office for the western district, for permission to enter and purchase three quarter sections, agreeable to the provisions of the said law, and your petitioners as in duty bound will ever pray."

"JACOB ROBINSON,
"FREDERICK SWEARENGEN."

TALLAHASSEE, 29*th December*, 1826.

The following were endorsed on the above petition:

TERRITORY OF FLORIDA, *county of Leon.*

"Personally appeared before me, Ede Van Evour, justice of the peace for the county aforesaid, Jacob Robinson, who being duly sworn, deposeth and saith, that the facts contained in the within petition, as far as related from his own knowledge, are true, and as far as related from the knowledge of others, he believes to be true. "JACOB ROBINSON."

Sworn to before me, this 29th day of December, 1826.

EDE VAN EVOUR, *J. P.*

"Let the writ issue. WOODWARD, *Judge.*
"*December* 29*th*, 1826."

SUPERIOR COURT, *clerk's office, middle district of Florida, Leon.*

The foregoing five pages are true copies and extracts from the files and records of this office in the case of Jacob Robinson and Frederick Swearengen, and R. K. Call and G. W. Ward. Witness my official signature and private seal, (there being no seal of office,) Tallahassee, 5th January, 1828.

C. NICHOLAS, *Clerk,* [SEAL.]

And at another day, to wit, on Tuesday, the 6th day of January, in the year 1829, came the parties, by their attorneys, and filed a certain agreement in writing, which agreement is as follows:

It is agreed between the parties in the above case, that the defendants in error cultivated and inhabited, previous to the year 1825, on the quarter section of land named in their application, and were entitled to pre-emptions;